

Power Promotions, LLC
2145 N. Talbott Street
Indianapolis IN 46206

Permit #RR49-12296
District 6

**PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

I.

BACKGROUND OF THE CASE

The Applicant, Power Promotions, LLC (Applicant), 2145 N. Talbott Street, Indianapolis IN 46202, filed its application for a transfer of ownership for a type 210, Alcohol and Tobacco Commission (ATC) permit, permit #RR49-12296. The ATC assigned the application for hearing before the Marion County Local Board (LB). The LB conducted its investigation and the hearing regarding the application and recommended approval of the transfer at its May 20, 2002 meeting. The ATC voted to adopt the recommendation of the LB and granted the transfer.

The remonstrator filed a timely notice of appeal and the appeal was set before ATC Hearing Judge Daniel M. Steiner (HJ). Attorney Murray Clark represented the Applicant and the remonstrator was not represented by counsel at the appeal hearing on November 15, 2002 hearing. At that time, witnesses were sworn, evidence was heard and the matter was taken under advisement. The HJ now submits his Proposed Findings of Fact and Conclusions of Law to the ATC for its consideration.

II.

EVIDENCE AT THE HEARING

A.

WITNESSES

The following witnesses were sworn and provided testimony at the appeal hearing:

1. James Young (Young), the lead remonstrator. He has resided within a block of the proposed premises since 1987. He is primarily concerned that the Applicant's premises and the area around the proposed premises does not provide sufficient parking to accommodate their patrons and the residents of the area. He also has a general concern that when alcoholic beverages are served there is a greater risk of rowdiness and criminal activity, although

Young did not cite any objective evidence to support either his contention of insufficient parking or of the likelihood of increased disruptive activity as a result of the premises being located at this site. Through Young, the Remonstrator's Exhibit 1 and Remonstrator's Exhibit 4, along with Applicant's Exhibit A were admitted without objection.

2. Thomas John (John), 2015 N. Delaware Street, Indianapolis IN. John is vice president of the Neighborhood Association in this area, Herron-Morton Place Association (HMPA). John stated that he was actively involved in the negotiations between the HMPA and the Applicant regarding the Agreement, which has been introduced at this hearing as Applicant's Exhibit A. He stated that several hundreds of hours went into the negotiations regarding this document and that he is in support of the permit being located at this premises and that the building itself is a former theater and needs to have commercial not residential use.
3. Glenda Chesser (Chesser), 1928 N. Delaware Street, Indianapolis IN. She is the president of the HMPA and has been so on four different occasions. During her terms as president she has worked and been actively involved in the closure of three bars within the boundaries of the HMPA and that her initial reaction to this particular Applicant locating at these premises was negative. However, she has been persuaded based on contacts with the Applicant and based on the Agreement that has been reached, which is Applicant's Exhibit A, that this premises would be positive for this area and that if the Applicant does not live up to the terms of the Agreement that the HMPA would be successful in having the permit removed from this premises.

B.

EXHIBITS

The following exhibits were offered at the appeal hearing:

1. Remonstrator's Exhibit 1, consisting of a hand-drawn map drawn by Young of the streets and the "No Parking" areas in proximity to these premises.
2. Remonstrator's Exhibit 4, consisting of a copy of police runs in the area during the year 2002, in the area close to the premises.
3. Applicant's Exhibit A, in ten (10) parts, consisting of an Agreement, a Plan of Operation and Site and Developmental Plans for these premises, all of which were agreed to by the Applicant and by the HMPA president.

Remonstrator also offered its Exhibit 2, which was in three (3) parts, which contained photographs of an area somewhere in proximity to these proposed premises and also its proposed Exhibit 3, in seventeen (17) parts, consisting of copies of email

messages between various parties. Proposed Remonstrator's Exhibits 2 and 3 were denied based on lack of relevance and lack of foundation.

II.

PROPOSED FINDINGS OF FACT

1. The Applicant, Power Promotions, LLC, 2145 N. Talbott Street, Indianapolis IN 46202, has filed an application for a transfer of ownership of a type 210, ATC permit, permit #RR49-12296. (ATC file)
2. The LB recommended approval of this application and the remonstrator, Young, filed a timely notice of appeal. (ATC file)
3. Young offered no objective evidence at the ATC appeal hearing, which would in any way be persuasive or serve as substantial evidence to support a finding of reversal of the LB recommendation and its adoption by the ATC. (ATC appeal hearing)
4. There is no evidence that the Applicants are not legally qualified to hold an ATC permit. There is no evidence that they do not meet the requirements for fitness and reputation in the community, nor that the proposed premises is not properly zoned or that they would conduct their proposed premises in an unlawful manner and, therefore, there is no evidence to support a reversal of the LB recommendation. (ATC file, LB record of proceedings and ATC appeal hearing)
5. Any conclusion of law included in the foregoing findings of fact shall be deemed part of the ATC conclusions of law.

IV.

CONCLUSIONS OF LAW

1. The Applicant, Power Promotions, LLC, 2145 N. Talbott Street, Indianapolis IN 46202, is an applicant for transfer of ownership of a type 210, ATC permit, permit #RR49-12296. (ATC file)
2. The LB recommended this application be approved at the proposed premises. (Record of LB proceedings)
3. That the remonstrator offered no objective evidence to in any way persuade that the LB's recommendation and the adoption of that recommendation by the ATC should be reversed and the weight of the substantial evidence is with the Applicant and against the remonstrator. (ATC appeal hearing and record of LB proceedings)

4. There is no evidence that this application should be denied for any other legal reason and the evidence is that the Applicant is fully qualified to hold this permit at the proposed location. (ATC file, record of LB proceedings and ATC appeal hearing)
5. Therefore, the recommendation of the LB must be sustained for it is in accordance with the law and is supported by substantial evidence. (IC 7.1-3-19-11)
6. Any finding of fact included in the foregoing conclusions of law should be deemed part of the ATC finding of fact.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that the recommendation of the LB to approve the transfer of ownership of this permit at the proposed premises should be and the same hereby is affirmed and the permit at the proposed location of 2145 N. Talbott Street, Indianapolis IN 46202 is granted.

Date _____

Daniel M. Steiner, Hearing Judge